



U.S. Department of Justice

United States Attorney
Southern District of New York

The Jacob K. Javits Federal Building
26 Federal Plaza, 37th Floor
New York, New York 10278

March 21, 2024

BY ECF

The Honorable Alvin K. Hellerstein
United States District Judge
Southern District of New York
United States District Courthouse
500 Pearl Street, Room 1050
New York, New York 10007

The conference is adjourned to May 16 at 9:30 a.m.

SO ORDERED.

Dated: 3/22/24
New York, New York

/s/ Alvin K. Hellerstein
/s/ Alvin K. Hellerstein
United States District Judge

Re: *United States v. David Smothermon*, 19 Cr. 382 (AKH)

Dear Judge Hellerstein:

The Government writes, with the consent of defense counsel, to respectfully request that the conference currently scheduled for March 26, 2024 be adjourned until April 23, 2024.

As the Court is aware, the indictment in this case charges the defendant with wire fraud under the “right to control” theory, which the Supreme Court invalidated in *Ciminelli v. United States*, 143 S. Ct. 1121 (2023). On January 8, 2024, the Court granted the parties’ request to adjourn a pretrial conference to allow the parties to continue discussions regarding a potential pretrial resolution of this case in light of *Ciminelli*. (ECF No. 90). The parties have been unable to reach such a resolution. Accordingly, prior to the next conference, the Government intends to seek a superseding indictment charging the defendant with wire fraud under a “traditional” theory. The Government further intends to request a motion schedule and trial date at the next conference.

With the defendant's consent, the Government also respectfully moves for the exclusion of time under the Speedy Trial Act, 18 U.S.C. § 3161(h)(7)(A), from March 26, 2024, until the new conference date set by the Court.

Respectfully submitted,

DAMIAN WILLIAMS
United States Attorney

By:

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cc: Terry Yates, Esq. and George Murphy, Esq. (by ECF)